

31A-38-101. Title.

This chapter is known as the "Federal Health Care Tax Credit Program Act."

Enacted by Chapter 2, 2004 General Session

31A-38-102. Definitions.

As used in this chapter:

(1) "Bridge program" means the program established by the Department of Workforce Services on July 1, 2003:

- (a) to implement the federal health coverage tax credit program;
- (b) with federal funds; and
- (c) for qualified participants.

(2) "Federal health coverage tax credit program" means the health care tax credit program authorized by the Trade Reform Act.

(3) "Qualified participant" means an individual:

(a) eligible for coverage under the state program in accordance with Section 31A-38-103; and

(b) qualified by the Internal Revenue Service and the Department of the United States Treasury to participate in the federal health coverage tax credit program.

(4) "State program" means the program established under this chapter:

- (a) to implement the federal health coverage tax credit program; and
- (b) for qualified participants.

(5) "Trade Reform Act" means the Trade Adjustment Assistance Reform Act of 2002, 107 P.L. 210.

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31A-38-103. Implementation of the federal health coverage tax credit program.

(1) An employee is considered to be an employee of the employee's last employer for purposes of participating in the federal health coverage tax credit program if:

- (a) the employee is or was an employee of the employer;
- (b) the employer is or was doing business in this state;
- (c) the employee requires health care services from a licensed health care provider doing business in this state;
- (d) the health insurance benefit plan covering the employee is terminated by the employer or former employer; and
- (e) the employee is a qualified participant.

(2) (a) Qualified participants eligible for the federal health coverage tax credit program and qualifying family members of qualified participants shall be:

- (i) grouped together under the state program;
- (ii) considered a single group risk pool; and
- (iii) considered to be a group for purposes of:
 - (A) implementing the federal health coverage tax credit program; and
 - (B) providing health insurance coverage.

(b) The coverage provided to the group formed under this Subsection (2) shall be considered to be group coverage.

(c) Notwithstanding that the coverage is considered group coverage, a member of the group may be individually underwritten and rated at the time of enrollment in the group.

(3) (a) Except as expressly provided in this chapter, the state program is excluded from regulation under this title if the state program:

(i) meets the requirements of this Subsection (3) upon implementation of the state program; and

(ii) continuously complies with the requirements listed in this Subsection (3).

(b) The Department of Workforce Services shall contract, in compliance with state purchasing rules:

(i) with an insurance company licensed to provide accident and health insurance:

(A) to provide insurance for the state program;

(B) to assume the risk of the health insurance coverage of the qualified participants in the state program; and

(C) to take an action described in this Subsection (3)(b)(i) in consideration of receipt of:

(I) a reasonable premium from qualified participants; and

(II) the advance health coverage tax credits from the United States Treasury; or

(ii) with a licensed third party administrator to administer the state program as a self-insurance program that provides accident and health insurance coverage of the qualified participants in the state program in consideration of receipt of:

(A) a reasonable premium from qualified participants; and

(B) the advance health coverage tax credit from the United States Treasury.

(c) (i) If the Department of Workforce Services contracts with a third party administrator under Subsection (3)(b)(ii), the Department of Workforce Services shall create and maintain a fund authorized under Subsection 31A-38-104(1)(b) to:

(A) pay claims covered by the state program; and

(B) receive the:

(I) reasonable premium from qualified participants; and

(II) advance health coverage tax credits from the United States Treasury.

(ii) The Department of Workforce Services shall ensure that the fund described in this Subsection (3)(c):

(A) is actuarially sound upon implementation of the state program; and

(B) is continuously maintained and managed on an actuarially sound basis.

(iii) The actuarial soundness of a fund created pursuant to this Subsection (3)(c) shall be supported by an opinion of an actuary that is a fellow in a nationally recognized actuary association designated by the Department of Workforce Services.

(d) (i) The insurance company or third party administrator under contract with the Department of Workforce Services shall:

(A) establish premium rates for health insurance coverage provided under this chapter that are reasonable and actuarially sound to:

(I) cover the payment of existing claims; and

(II) build reasonable and adequate reserves to pay future claims; and

(B) adjust its premium rates as needed to:

- (I) reflect the claim experience of the group;
- (II) cover administrative and reinsurance costs related solely to the group;
- (III) provide for a reasonable margin of profit from the group's coverage, not to exceed 15% of its premiums; and
- (IV) build actuarially reasonable reserves for the payment of future claims.

(ii) If the Department of Workforce Services creates a fund pursuant to Subsection (3)(c), the premiums paid by participants in the state program shall be designed to:

- (A) cover claims paid from the fund; and
- (B) build reasonable and appropriate reserves for the payment of future claims.

(e) (i) The insurance coverage designed by the insurance company or the third party administrator:

- (A) shall reflect the characteristics of the group;
- (B) shall meet the group's needs; and
- (C) may offer coverage that includes or does not include variable benefits.

(ii) In designing the group coverage, the insurance company or third party administrator shall ensure that the coverage and the premiums are not discriminatory.

(f) The coverage under the state program shall comply with:

- (i) all requirements of federal law pertaining to the federal health coverage tax credit program; and
- (ii) any federal requirement applicable to the health insurance coverage provided under the state program.

(g) The commissioner shall approve:

- (i) the coverage design;
- (ii) the policy or coverage form; and
- (iii) the premium rates that are used to provide coverage under this section.

(h) (i) The commissioner shall certify that the state program complies with the requirements of this chapter:

- (A) upon the initial implementation of the state program; and
- (B) every third year after implementation of the state program.

(ii) If the Department of Workforce Services elects to operate the state program through a self-insurance program, before issuance of certification by the commissioner, the executive director of the Department of Workforce Services shall certify to the commissioner that:

- (A) the following are in compliance with the requirements of this Subsection (3):
 - (I) state program coverage;
 - (II) premium rates;
 - (III) fund balances; and
 - (IV) reserves; and
- (B) the state program is in compliance and will continue to be in compliance with the requirements of this chapter and the Trade Reform Act.

(4) Qualified participants enrolled in the bridge program prior to and after March 10, 2004, shall be enrolled in the state program provided for in this chapter retroactive to whichever of the following dates ensures the continuance of health insurance coverage:

- (a) the date of their enrollment in the bridge program; or
- (b) July 1, 2003.
- (5) (a) The state is not liable, obligated, or responsible to guarantee the payment of claims of qualified participants enrolled in the state program created by this chapter.
- (b) Any guaranty association created under Chapter 28, Guaranty Associations, is not liable, obligated, or responsible to guarantee the payment of the claims of:
 - (i) any fund created by this chapter; or
 - (ii) the insurance company that is under contract with the Department of Workforce Services to provide the health insurance coverage intended by this chapter.

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31A-38-104. Authorization -- Money transferred for reserves.

- (1) The Department of Workforce Services may:
 - (a) convert the bridge program to the state program through any of the following, or combination of the following, that the Department of Workforce Services considers best serves the needs of qualified participants:
 - (i) a contract with a licensed insurance company authorized to do business in the state;
 - (ii) through any other arrangement acceptable under the Trade Reform Act; or
 - (iii) a self-insurance program through a third party administrator as provided in Subsection 31A-38-103(3)(b)(ii); and
 - (b) obligate up to \$2,000,000 of the Special Administrative Expense Account created in Section 35A-4-506 as reserves for the state program.
- (2) The money in Subsection (1)(b) may be used until the reserves in the state program become adequate.

Amended by Chapter 303, 2011 General Session

Amended by Chapter 342, 2011 General Session